

BRB No. 05-0617 BLA

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| MARY T. LaMONICA |) | |
| (Widow of CHARLES LaMONICA) |) | |
| |) | |
| Claimant-Respondent |) | |
| |) | |
| v. |) | |
| |) | |
| GATEWAY COAL COMPANY |) | DATE ISSUED: 10/31/2005 |
| |) | |
| Employer-Petitioner |) | |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' |) | |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | |
| Party-in-Interest |) | DECISION and ORDER |

Appeal of the Decision and Order – Awarding Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Raymond F. Keisling (Carpenter, McCadden and Lane, LLP), Wexford, Pennsylvania, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order – Awarding Benefits (2003-BLA-5887) of Administrative Law Judge Michael P. Lesniak on a survivor’s claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). Based on the date of filing, the administrative law judge adjudicated this claim pursuant to 20 C.F.R Part 718.¹ The administrative law judge accepted

¹ The record indicates that the miner filed an application for benefits on January 6, 1982, which was denied by Administrative Law Judge Daniel A. Sarno, Jr. on July 21, 1986, due to the miner’s failure to establish total respiratory disability, although the presence of pneumoconiosis was established. Director’s Exhibit 1. The miner filed a second application for benefits on June 8, 1992, which was denied by Administrative Law Judge Michael P.

the parties' stipulation that the employer was the properly designated responsible operator, that the miner had nine and one-half years of coal mine employment, that claimant was the eligible survivor of the miner, and that the miner suffered from pneumoconiosis arising out of coal mine employment. Decision and Order at 2; Hearing Transcript at 6-7. Considering the only issue before him, the administrative law judge found that the miner's death was due to pneumoconiosis. Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge erred in finding that the miner's death was due pneumoconiosis at Section 718.205(c). Specifically, employer contends that the administrative law judge erred in not crediting the opinion of Dr. Oesterling, who reviewed the miner's medical records and the autopsy report and slides and found that the miner's death was not due to pneumoconiosis over the opinion of Dr. Wecht, who also reviewed the miner's medical records and examined the miner's body, the autopsy report and the slides, and the death certificate signed by Dr. Bhatt which supported Dr. Wecht's opinion that the miner's death was hastened by pneumoconiosis. Claimant and the Director, Office of Workers' Compensation Programs, (the Director) are not participating in the appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a survivor's claim filed on or after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis. Death is due to pneumoconiosis where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, where death was caused by complications of pneumoconiosis, or where the presumption set forth at 20 C.F.R. §718.304, relating to complicated pneumoconiosis, is applicable. See 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Pneumoconiosis is a "substantially contributing cause of a miner's death" if it hastens the miner's death. 20 C.F.R. §718.205(c)(2); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13

Lesniak on March 17, 1994, as the miner again failed to establish the presence of a totally disabling respiratory impairment. Director's Exhibit 1. The miner died on February 22, 2001, Director's Exhibit 15, and claimant filed for survivor's benefits on April 4, 2001. Director's Exhibit 3.

BLR 2-100 (3d Cir. 1989).²

After consideration of the administrative law judge's Decision and Order – Awarding Benefits, the arguments raised on appeal, and the evidence of record, we conclude that the Decision and Order – Awarding Benefits is supported by substantial evidence and contains no reversible error. In weighing the conflicting opinions of Drs. Wecht and Oesterling, who the administrative law judge found to be highly qualified and to have provided detailed, though conflicting, medical reports regarding the cause of the miner's death, the administrative law judge permissibly credited the opinion of Dr. Wecht, who was Board-certified in anatomic and clinical pathology, as well as forensic pathology,³ and who opined that while the miner's death was due to heart disease, it was hastened by pneumoconiosis as it increased the burden on the miner's heart. The administrative law judge rationally found that Dr. Wecht's opinion was well supported by the record evidence, better reasoned, and more persuasive than the contrary opinion of Dr. Oesterling, who was Board certified in anatomic pathology and who conceded that the miner had coal workers' pneumoconiosis, but found that it did not contribute to death. Claimant's Exhibit 1; Director's Exhibit 17; Decision and Order – Awarding Benefits at 5-9; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).

The administrative law judge permissibly accorded greater weight to Dr. Wecht's opinion because he found it better reasoned and better supported by the evidence of record. The administrative law judge found that Dr. Oesterling's diagnosis of severe talcosis was not supported by other medical evidence, *i.e.*, the miner was never diagnosed with severe talcosis during his lifetime not did the record contain a history of exposure to talc to the degree suggested by Dr. Oesterling. Decision and Order at 8. The administrative law judge further noted the miner's twenty-nine and one-half years of coal mine employment, the uncontested autopsy finding of coal workers' pneumoconiosis, the opinions of three doctors who

² Since the miner's last coal mine employment took place in the Commonwealth of Pennsylvania, the Board will apply the law of the United States Court of Appeals for the Third Circuit. Director's Exhibit 1; *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

³ Employer states that the administrative law judge incorrectly noted that the autopsy was performed by Dr. Wecht when, in fact, Dr. Wecht's office performed the autopsy. The administrative law judge, however, stated that Dr. Wecht had clarified this on deposition, when he testified that the autopsy was performed by one of his staff pathologists and that he had then reviewed all the materials and sections of all the body organs and tissue, made some descriptions, cut them, and submitted portions for slides to be made, then examined those slides and made the final diagnosis. Decision and Order at 5.

examined the miner during his lifetime and who found claimant totally disabled due to pneumoconiosis, *i.e.*, Drs. Bhatt, Silverman, and Levine. The administrative law judge noted that although Dr. Cho did not find the miner totally disabled due to coal workers' pneumoconiosis, he did diagnose the existence of coal workers' pneumoconiosis and that while Dr. Renn did not diagnose the existence of coal workers' pneumoconiosis, none of the physicians, other than Dr. Oesterling, diagnosed the existence of talcosis.

It is within the administrative law judge's discretion to determine whether a medical report is adequately explained, well reasoned and persuasive and the Board will not overturn those credibility determinations if they are supported by the record. In this case, the administrative law judge properly accorded lesser weight to Dr. Oesterling's opinion for the reasons discussed above. *Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 22 BLR 2-467 (3d Cir. 2002); *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *Trumbo*, 17 BLR 1-85; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Moreover, employer's assertion that the administrative law judge did not properly evaluate the medical evidence submitted in support of the living miner's claim is rejected, as the administrative law judge did discuss that evidence. Decision and Order at 8.

We also reject employer's argument that the administrative law judge erred by crediting the death certificate of Dr. Bhatt, which listed coal workers' pneumoconiosis as a significant contributing factor in the miner's death, as support for the opinion of Dr. Wecht, for the reason that the opinion of Dr. Bhatt had been rejected on consideration of the miner's lifetime claim for benefits. Dr. Bhatt's opinion in the miner's 1994 claim addressed the question of whether the miner was totally disabled by pneumoconiosis at that time. In the instant, survivor's claim, the question addressed by Dr. Bhatt's statement on the miner's death certificate was whether the miner's coal workers' pneumoconiosis hastened the miner's death on February 22, 2001. 20 C.F.R. §718.205(a)(1)-(3); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); Decision and Order – Awarding Benefits at 3-4; Director's Exhibit 1 (Administrative Law Judge Michael P. Lesniak's Decision and Order dated March 17, 1994 denying benefits on the miner's claim). Because it is within the discretion of the administrative law judge, as the trier of fact, to determine whether medical reports are adequately documented and reasoned and the administrative law judge has properly exercised his discretion in this case, we affirm the administrative law judge's finding that Dr. Wecht's opinion as supported by the miner's death certificate establishes that the miner's death was hastened by pneumoconiosis under Section 718.205(c), and establishes entitlement to benefits. *Lukosevicz*, 888 F.2d 1001, 13 BLR 2-100; *Tackett v. Armco, Inc.*, 17 BLR 1-103 (1993).

Accordingly, the administrative law judge's Decision and Order – Awarding Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge